

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	Criminal No. 1:19-CR-00281
	:	
v.	:	(Judge Wilson)
	:	
CESAR RODRIGUEZ-AREVALO	:	(Electronically Filed)

MOTION TO DISMISS INDICTMENT

AND NOW, comes the defendant, Cesar Rodriguez-Arevalo, by his attorney Ari D. Weitzman of the Federal Public Defender's Office, and moves this Honorable Court to dismiss the indictment because 8 U.S.C. § 1326 violates Mr. Rodriguez-Arevalo's right to equal protection under the law pursuant to the Fifth Amendment of the United States Constitution. In support thereof, it is averred as follows:

1. By Indictment filed July 21, 2021, Mr. Cesar Rodriguez-Arevalo was charged with a single count of illegal reentry in violation of 8 U.S.C. § 1326.
2. On August 23, 2021, Mr. Rodriguez-Arevalo appeared before Magistrate Judge Susan E. Schwab for an initial appearance and arraignment. At that time, he entered a plea of "not guilty" to the Indictment.
3. Pretrial motions are due in this matter by March 11, 2022, with jury selection to commence on April 4, 2022.

4. The Fifth Amendment to the United States Constitution provides that no person shall be “deprived of life, liberty or property without due process of law.”

U.S. CONST. AMEND. V. “The liberty protected by the Fifth Amendment’s Due Process Clause contains within it the prohibition against denying any person equal protection of the laws.” *See United States v. Windsor*, 570 U.S. 744, 774 (2013).

5. While 8 U.S.C. § 1326 is a facially neutral law, it was enacted with a discriminatory purpose and it disparately impacts a disfavored group – Latinx people. Accordingly, it violates equal protection and is unconstitutional. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977); *see also United States v. Carrillo-Lopez*, -- F.Supp.3d --, 2021 WL 3667330, U.S. Dist. LEXIS 155741 (D. Nev. Aug. 18, 2021) (finding §1326 to violate the Fifth Amendment’s equal protection guarantee and dismissing the indictment).

WHEREFORE, the defendant, Cesar Rodriguez-Arevalo, respectfully requests that this Honorable Court grant the within motion to dismiss indictment.

Respectfully submitted,

Date: March 11, 2022

/s/ Ari D. Weitzman

ARI D. WEITZMAN, ESQUIRE

Asst. Federal Public Defender

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Attorney for Cesar Rodriguez-Arevalo

CERTIFICATE OF SERVICE

I, Ari D. Weitzman, Esquire, Assistant Federal Public Defender, do hereby certify that I served a copy of the foregoing **Motion to Dismiss Indictment**, via Electronic Case Filing, and/or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, and/or by hand delivery, addressed to the following:

JOANNE SANDERSON, ESQUIRE
joanne.sanderson@usdoj.gov

CESAR RODRIGUEZ-AREVALO

Respectfully submitted,

Date: March 11, 2022

/s/ Ari D. Weitzman
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